IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal (Jail) Revision Petition No.159/2006.
(Gopal Sharma @ Tantan Vs. State of Rajasthan)

DATE OF ORDER : April 17th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Rajesh Bhati, Amicus Curiae for the petitioner.
Mr. J.P.S. Choudhary, P.P. for the State.

BY THE COURT :

The instant revision petition has been filed from jail by the convict. Shri Rajesh Bhati, Advocate was appointed amicus curiae to assist the Court on behalf of the petitioner. In this revision petition, the petitioner seeks to challenge the judgment dated 13.02.2006 passed by the Addl. Sessions Judge (Fast Track) No.2, Udaipur (hereinafter 'the appellate Court') in Criminal Appeal No.42/2005 whereby the appellate Court affirmed the order of conviction and

sentence dated 03.12.2004 passed by the Juvenile Justice Board, Udaipur in Criminal Regular Case No.26/2003 for offence under Section 302, I.P.C. The trial Court having found the petitioner guilty for offence under Section 302, I.P.C. sentenced him to be kept under the State custody in juvenile home for 14 years.

Brief facts of the care are that in the intervening night of 2nd and 3rd of December, 2002 murder of a foreign lady took place in an hotel known as Hotel Gangaur Ghat, Udaipur. It is alleged that the petitioner who had claimed himself to be guide with the foreigner tourist lady (Lee Ching hi) stayed with the said tourist lady in the hotel in Room No.301. Both the petitioner and the deceased tourist were seen returning to the room on 02.12.2002, at 10 P.M. in the night they took dinner together in that very hotel and returned to the room. It is further alleged that in the morning on 03.12.2002 when till 10 A.M. the room was not opened and there was no response from inside the room, it was got opened with the duplicate key of the room. In the room, dead body of the deceased tourist lay on the ground in between two beds. On the aforesaid complaint presented by the Manager of the hotel, FIR Ex.-P/85 was registered at police station Ghantaghar, Udaipur. After investigation, and in view of the fact that the petitioner was found missing who had been last seen

with the deceased, challan was filed against the petitioner before the competent Court. Before the Court, the petitioner filed application that he was 17 years and 6 months of age on the date of the alleged incident, therefore, the learned Sessions Judge by order dated 13.02.2003 sent the accused for trial before the Principal Magistrate, Juvenile Justice Board, Udaipur (hereinafter, 'the trial Court') where the trial in the case took place. The trial Court, after recording evidence and having heard arguments, arrived at the finding of guilt against the petitioner for offence under Section 302, I.P.C. for committing murder of foreigner Lee Ching hi and accordingly convicted the petitioner for offence under Section 302, I.P.C. As to sentence, as noted above, the petitioner was ordered to be kept in special juvenile home for fourteen years in accordance with Section 16 (1) of the Juvenile Justice Act.

The said judgment was challenged before the Sessions Court, Udaipur by way of appeal which was transferred to Addl. Sessions Judge (Fast Track) No.2, Udaipur for disposal. The learned appellate Court, having re-appreciated the entire evidence on record, reached conclusion that there is sufficient evidence on record upon which the petitioner has been rightly convicted and sentenced by the Juvenile Justice Board for committing offence under Section 302, I.P.C.

Learned amicus curiae Mr. Bhati invited attention

of the Court towards evidence of P.W.-2 Dashrath Singh and P.W.-10 Gopal as well as testimony of other witnesses and submitted that there is material contradiction in their statements and there is no direct evidence against the petitioner of having committed the offence, therefore, the petitioner has wrongly been convicted. It is contended by him that the impugned judgment of conviction is completely based on circumstantial evidence, however, there is no direct evidence brought on record by the prosecution to prove its case. According to him, obviously, there is no eye-witness before whom the incident took place, therefore, in the absence of direct evidence of eye-witness or proper corroborative evidence, the trial Court has committed serious error in arriving at the finding of guilt against the petitioner.

The learned Public Prosecutor vehemently opposed the revision petition and supported the impugned judgment of conviction and sentence. It is contended by the learned Public Prosecutor that there is sufficient evidence of last-seen against the accused and, admittedly, the petitioner was acting as a tourist-guide and he stayed with the deceased tourist lady in the hotel and, just after the incident, the petitioner was found absconding and, in the night, at 11 O'clock, P.W.-10 Gopal had seen him go through the terrace. It is contended by learned Public Prosecutor that the accused and deceased tourist had taken dinner

together and, thereafter, they stayed in the room for quite some time. It is further contended that on the basis of the strong circumstantial evidence which is substantive in nature, coupled with the fact that the accused had brought the deceased in the hotel, it is obvious that the material fact of last-seen is sufficient to convict the petitioner. It is argued by the Public Prosecutor that in the absence of the direct evidence, circumstantial evidence is required to be taken into account and, there being complete chain of evidence in this case, the trial Court has committed no illegality in coming to the conclusion of guilt of the accused. It is also submitted by the learned Public Prosecutor that in this case the charge is very serious and it is also a special circumstance that the commission of the offence by the accused in this case is an act prejudicial to the image of the country in the world besides affecting the entire tourism business. It is submitted by the learned Public Prosecutor that tourists move in the country only on the guidance and faith of the tourist-guides and betrayal to the tourist is betrayal to the country. Therefore, the finding of guilt arrived at by the trial Court and affirmed by the appellate Court, does not require any interference.

I have gone through the judgment impugned passed by the Juvenile Justice Board as well as judgment of the appellate Court.

It is true that there is no eye-witness to the incident in this case and, in the absence of the direct ocular evidence, the circumstantial evidence must be weighed to ascertain the factum probandum in this case. The fact may not be proved by direct evidence but when the circumstances bearing upon the fact are revealed in the case which are sufficiently proximate to draw the ultimate conclusion of the fact in the case, the prosecution may be said to have proved its case against the accused.

In the present case, one important aspect of the ocular evidence coming on record is that the witnesses examined by the prosecution are independent witnesses and nothing is there in their testimony to doubt the veracity of their evidence. Witnesses P.W.-2 Dashrath Singh, P.W.-3 Roopa Ram and P.W.-10 Gopal Gaur belong to the hotel in which the deceased and accused had come to stay on 01.12.2002. Without any contradiction, these witnesses have deposed before the Court that the accused stayed with the deceased in the hotel in Room No.301 and both of them had taken their dinner at 10 P.M. in the night on 02.12.2002. It is also disclosed in their testimony that the room in which both accused and deceased were staying was not opened till 10 A.M. on 03.12.2002 and, therefore, after finding that the room was locked from outside, it was opened with duplicate key lying at the receptionist-counter and, inside the room, dead body

of tourist Lee Ching hi was seen lying on the floor between two beds. The clinching evidence in the case is that though both the accused and deceased were staying together in the room and they had taken dinner together in the hotel at about 10 P.M. on 02.12.2002 on 03.12.2002, in the morning when the room was not opened till 10 A.M., it was checked and the room was found locked from outside and, inside the room, dead body of the deceased was lying. In his evidence, P.W.-10 disclosed that at about 11 O'clock in the night (on 02.12.2002) he had seen accused Gopal coming down in the hotel. On 03.12.2002, the tourist lady was found dead in the room and guide, accused Gopal Sharma who, too, was staying in the room with the tourist, was found absconding from the scene. This is a strong circumstance bearing upon the fact of commission of the crime against the accused.

In his statement recorded under Section 313, Cr.P.C. the accused while denying the allegations levelled against him also denied the correctness of facts deposed by witness P.W.-10 Gopal, who was manager of the Hotel Gangaur Ghat. However, there is documentary evidence on record to establish that accused was staying in the said hotel in Room No.301 with the deceased foreign lady and, at the said hotel, the accused had claimed himself to be tourist guide. The presence of the accused with the deceased tourist lady in the said hotel, though denied by him in his

statement under Section 313, Cr.P.C., is proved beyond doubt by examination of hand-writing and finger-prints.

It is thus evidently clear that after committing murder of Lee Ching hi, accused petitioner ran away from the scene of occurrence in the night of 02.12.2002 itself after putting lock on the room in which he was staying alongwith deceased foreign lady. The accused categorically refused to lead any evidence in defence.

The ingredients for satisfying the test of evaluation of the circumstantial evidence are conspicuously existent in the present case from which inference of guilt drawn may cogently and firmly be established against the accused. The chain of evidence is completely unbroken and there is sufficient evidence on record of staying together in the hotel and, then, on 03.12.2002, accused not being found until his arrest vide Ex.-P/82. The evidence is a strong factum probans in the case so proximate to the principal fact that indisputable link is established between the crime and the perpetrator.

In the present case, the circumstances glaringly unravel linked chain of events that only support the prosecution version. The case is so well knit with divulgence of information by the accused that the statement of the investigating officer inspires credence sufficient to believe his testimony. All the circumstantial evidence coming on record either

piecemeal or taken together invariably converges on the conclusion of the guilt of the accused. Any attempt at an inference deliberately conceived for innocence of the accused is immediately thwarted by the fact of sudden disappearance of the accused from the scene of occurrence. This leaves no manner of doubt about the involvement of the accused in the incident.

It is obvious from the above that the prosecution has proved its case beyond reasonable doubt. As discussed above, the trial Court has rightly appreciated the evidence on record, more so, the motbir witnesses have pointed out no circumstance to disbelieve the evidence of the investigating officer in the present case and nothing has come on record to indicate any possibility of a conclusion other than of the guilt of the accused.

For the foregoing discussion, in my opinion, in the facts and circumstances of the case, the finding of guilt arrived at against the accused by the Courts below does not require any interference. Consequently, this revision petition is hereby dismissed.

(Gopal Krishan Vyas) J.